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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PJH

CV 08

0098

WILSON & COUSINS DIVISION OF
PALAMAR INDUSTRIES, INC.,

Plaintiff,

v.

T. CHRISTY ENTERPRISES, INC.,

Defendant.

Case No. _____

DECLARATION OF JEFFREY
SAUNDERS IN SUPPORT OF
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION

DECLARATION OF JEFFREY SAUNDERS IN SUPPORT OF APPLICATION FOR TRO AND ORDER TO
SHOW CAUSE RE PRELIMINARY INJUNCTION

1 I, Jeff Saunders, declare:

2 1. I am the General Manager of Plaintiff Wilson & Cousins Division of
3 Palamar Industries, Inc. ("Wilson & Cousins" or "Plaintiff"), a position I have held since
4 1998. This Declaration is based on my own personal knowledge, except where I indicate that
5 the information is based on information and belief. If called to testify, I could and would do
6 so competently as to the matters set forth herein. I am submitting this Declaration in support
7 of Plaintiff's Motion for a Preliminary Injunction.

8 2. I have been employed by Wilson & Cousins since 1993. From that
9 date until the present, I have had multiple responsibilities at Wilson & Cousins, including
10 sales, advertising and promotion of Wilson & Cousins products, as well as overall
11 responsibility for product quality and certifications. Regarding product quality and
12 certifications, I have been responsible for all aspects of design, from inception to completion,
13 and up to and including applying for and supplying samples to any approval agencies,
14 including but not limited to Underwriters Laboratories, Underwriters Laboratories of Canada,
15 Factory Mutual and the New York City Board of Approval (MEA).

16 3. Wilson & Cousins is a manufacturer of interior fire protection
17 equipment. Wilson & Cousins manufactures a full range of standpipe valves, cabinets and
18 accessories, including fire department connections, adapters, hose racks, hose reels, pressure
19 reducing valves, brass and polycarbonate nozzles, hydrant gate valves and check valves.
20 Wilson & Cousins sells its fire protection equipment products throughout North America,
21 including the U.S. and Canada, as well as elsewhere throughout the world. Wilson & Cousins
22 sales of its fire protection equipment products amounted to approximately \$3,500,000.00 and
23 \$2,800,000.00 in 2007 in the U.S. and Canada, respectively. Over the past ten years, Wilson
24 & Cousins' revenue from the sale of fire protection equipment in the U.S. was between \$10-
25 15,000,000.00 million, and between \$20-25,000,000.00 million for such sales in Canada.

26 4. Wilson & Cousins first started manufacturing and selling fire protection
27 products in 1881, and has manufactured and sold such products continuously since then.
28

1 Wilson & Cousins now has 126 years of manufacturing experience in the fire protection
2 equipment industry. As such it has built and maintained a reputation in the U.S. and Canada
3 as a provider of high quality fire protection equipment products. As part of its efforts to build
4 and maintain its reputation, Wilson & Cousins has devoted substantial resources to obtaining
5 product listings, certifications and approvals by Underwriters Laboratories, Underwriters
6 Laboratories of Canada, Factory Mutual Research, among other such organizations.

7 5. Wilson & Cousins sells its fire protection equipment products primarily
8 to distributors, who in turn sell the products to builders, contractors, plumbing specialists and
9 others that specify, purchase and/or install fire protection equipment in all types of buildings
10 and structures. Based upon my experience, those distributors, builders, contractors and others
11 rely upon our assurances that they will receive the finest quality products and services
12 available, and have come to rely upon Wilson & Cousins' reputation for the design and
13 manufacture of high quality, safe and dependable fire protection equipment. The foregoing
14 reputation earned and enjoyed by Wilson & Cousins has been critical to its success over the
15 years.

16 6. Wilson & Cousins uses a number of marks and logos in connection
17 with the advertising, promotion and sale of its fire protection equipment. It is the owner of
18 marks registered with the Canadian Intellectual Property Office ("CIPO") and additional
19 marks for which trademark applications have been filed in the U.S. and Canada with the U.S.
20 Patent & Trademark Office ("USPTO") and CIPO, respectively. The marks applied-for
21 include the WILSON & COUSINS mark, the WC & Design Mark (also referred to below as
22 the W&C Helmet Mark), and the WILSON & COUSINS & Design Mark. Attached hereto as
23 Exhibit 1 are printouts from the USPTO and CIPO web sites showing the above marks.

24 7. Wilson & Cousins advertises and promotes its products on the internet
25 in its web site, www.wilsonandcousins.com. Wilson & Cousins also advertises and promotes
26 its products in fire protection trade magazines such as Sprinkler Quarterly, Sprinkler Age,
27 CASA (Canadian Automatic Sprinkler Association) and FPC (Fire Protection Contractor).
28 These trade magazines are distributed throughout the U.S. and Canada. Through support of

1 our distributors, Wilson & Cousins' products have been shown and promoted at local and
2 international trade shows, including the annual trade show associated with the AFSA, the
3 American Fire Sprinkler Association. At such shows, Wilson & Cousins products and
4 trademarks are exposed to contractors, installers, inspectors, engineers and architects involved
5 in the installation of fire protection equipment in buildings and structures.

6 8. One of Wilson & Cousins's marks is a firefighter helmet with stylized
7 letters W and C (hereinafter the "W&C Helmet Mark") (also referred to above as the WC &
8 Design Mark). A depiction of this mark is attached hereto as Exhibit 2. Wilson & Cousins
9 first used this mark no later than 1989, and first used it on fire equipment products sold in the
10 U.S. by no later than 1998. Many of Wilson & Cousins' fire protection products prominently
11 feature the W&C Helmet Mark. Since 1998, that mark has been placed on fire hose nozzles,
12 fire safety valves, fire hose racks and reels, fire department connections, fire hose and
13 extinguisher cabinets, fire-equipment related wrenches, adapters, plugs, caps and valves.
14 Since 1998, Wilson & Cousins has manufactured and sold in the U.S. over 1,000,000 items
15 featuring the W&C Helmet Mark.

16 9. Based upon my experience and knowledge of the industry, Wilson &
17 Cousins has had exclusive use of the W&C Helmet Mark on fire protection equipment in the
18 U.S. since 1998; and, it is a unique mark in the fire protection equipment industry. Based
19 upon my experience in the industry, both distributors and those directly involved in the
20 installation of fire protection equipment, have come to rely upon and recognize the W&C
21 Helmet Mark as symbolizing Wilson & Cousins and its reputation for the design and
22 manufacture of high quality, safe and dependable fire protection equipment.

23 10. Wilson & Cousins' advertising and promotion, referred to above,
24 including its internet and trade magazine advertising and promotion have extensively featured
25 the W&C Helmet Mark by itself and on products depicted in such advertising and promotion.
26 Examples of such advertising and promotion featuring the W&C Helmet Mark are attached
27 hereto as Exhibit 3. Additionally, once Wilson & Cousins products featuring the W&C
28 Helmet Mark are installed in a building or structure, they quite frequently remain visible, and

1 thus even after their initial sale and distribution, contractors, builders, plumbers and other
2 trades-people, consumers and others are repeatedly exposed to the mark indefinitely
3 thereafter.

4 11. In my years with Wilson & Cousins and as part of my duties, I have
5 become knowledgeable regarding the requirements for obtaining and the use of industry
6 certification marks. In that regard, Wilson & Cousins devotes significant efforts to obtaining
7 industry certifications from product safety testing and certification organizations. One such
8 organization with which I have extensive experience is Underwriters' Laboratories Inc.
9 ("UL") and Underwriters' Laboratories of Canada ("ULC").

10 12. UL is a U.S. organization based in Northbrook, Illinois that develops
11 standards and test procedures for products, materials, components, assemblies, tools and
12 equipment, chiefly dealing with product safety. ULC is the Canadian counterpart to UL. UL
13 evaluates products, components, materials and systems for compliance with specific
14 requirements, and permits acceptable products to carry a UL certification mark, as long as
15 they remain compliant with the standards. UL offers several categories of certification marks.
16 UL also specifies the manner in which the UL mark and related indicia may be displayed on
17 products, and imposes other requirements upon manufacturers that use its marks.

18 13. UL certifications are of critical importance and are necessary to
19 compete and succeed in the fire protection equipment industry. UL product certifications are
20 frequently required for fire protection equipment in contract specifications, for safety reasons,
21 and for insurance requirements. Indeed, all Wilson & Cousins products, where required, are
22 listed and approved by UL and FM. In practice, it is extremely difficult to sell certain types
23 of fire protection equipment without a UL certification. Large distributors are generally
24 unwilling to carry a product without UL certification, and the sale or use of non-certified fire
25 protection equipment may invalidate insurance coverage and expose one to liabilities. It is
26 common practice in the fire protection equipment fields for architects, engineers, contractors
27 and builders to specify UL Listed equipment or UL Recognized materials. Local
28 jurisdictional authorities, such as building, electrical and fire inspectors, are reluctant to

1 accept a fire protection product for installation in a building unless it carries a recognized
2 third-party compliance mark such as the UL Mark. For example, UL literature states as
3 follows: "Specifying UL Listed and Classified products up front is one of the best methods
4 used by designers, consultants, insurers and others to help gain jurisdictional acceptance. A
5 typical specification reads: 'The [product] must bear the UL Mark.' Or, if the specification
6 cannot be that precise, an alternate wording would read: 'The [product] must meet the
7 requirements of Underwriters Laboratories Inc.® The UL Mark on the product will be
8 accepted as evidence of compliance.'" See http://database.ul.com/glistinterf_00-1-frnt.pdf, p.
9 ix. A true and correct copy of the foregoing literature from the UL website is attached hereto
10 as Exhibit 4.

11 14. Many of Wilson & Cousins' products have obtained UL certification.
12 As such, Wilson & Cousins products have been investigated by UL and found to be in
13 compliance with the appropriate UL safety requirements. Wilson & Cousins has also
14 demonstrated to UL that it has a program in place to ensure that each copy of the product
15 complies with the appropriate requirements. UL conducts periodic, unannounced follow-up
16 inspections at Wilson & Cousins' locations to check ongoing compliance. Wilson & Cousins
17 devotes significant time, money and other resources to remaining UL compliant with regard
18 to many of its products.

19 15. Wilson & Cousins goes to great efforts and considerable expenditures
20 to ensure that its products remain UL compliant and meet certain safety standards. Each
21 individual UL Listed product unit manufactured by Wilson & Cousins is individually tested at
22 its facilities in Ontario, Canada in order to ensure that it meets the UL and other appropriate
23 safety and quality standards.

24 16. One product of Wilson & Cousins that is "UL Listed" is the Wilson
25 and Cousins IE144 series check valve product. A check valve is a valve that normally allows
26 fluid to flow through it in only one direction. Check valves are two-port valves, meaning they
27 have two openings in the body, one for fluid to enter and the other for fluid to leave. This
28 product series first obtained UL Listing in July of 2003. Attached hereto as Exhibit 5 is the

1 UL and ULC certifications pertaining to Wilson & Cousins check valve products, File no.
2 EX6935. By obtaining this certification, Wilson & Cousins is authorized to display a UL and
3 ULC "Listing Mark," which is comprised of the following four elements: The "UL" and/or
4 "ULC" mark, the term "LISTED", the product identity (*i.e.*, "Check Valve"), and the unique
5 product control number assigned by UL (*i.e.*, "27GH"). The UL control number for the
6 Wilson and Cousins check valve is unique to Wilson & Cousins' check valve product, and
7 cannot be used with other manufacturers' product. The UL Listing Mark, as depicted on the
8 Wilson & Cousins check valve product, is reflected on the check valve that is reproduced in
9 the attached Exhibit 6.

10 17. UL also requires that any manufacturer using a UL Listing Mark also
11 indicate the country where the product was manufactured. In conformance with that
12 requirement, the Wilson & Cousins check valve lists the term "CHINA" on the product,
13 which is where the product is manufactured, before being shipped to Wilson & Cousins
14 facilities for final testing, approval, sale and shipping. Every Wilson & Cousins check valve
15 and other fire protection equipment product passes through its Ontario, Canada testing facility
16 prior to sale and shipment to a distributor. Other elements of the Wilson & Cousins check
17 valve design include, towards the bottom of the check valve, a Factory Mutual approval mark,
18 namely, a diamond symbol encasing the letters "FM", with an uppercase letter "S" placed
19 directly to its right. The "S" denotes the foundry at which the Wilson & Cousins product is
20 manufactured, and is unique to Wilson & Cousins' check valve. In addition, rotating the
21 valve 180 degrees, the product displays an directional water flow arrow, with the number "4"
22 placed immediately to the right, denoting the 4-inch size of the valve. Directly underneath
23 those symbols are the characters "300 LB"—a PSI designation for the product—as well as the
24 product model number (*i.e.*, IE144T), and the year of manufacture (*e.g.*, "06"). These
25 elements of the check valve markings are shown in the Wilson & Cousins check valve
26 product depictions in Exhibit 6.

27 18. The placement and location of the UL Listing Mark, FM approval
28 mark, CHINA designation, "S" foundry designation, directional arrow, valve size indicator,

1 PSI designation, product model number and year of manufacture are unique to Wilson &
2 Cousins check valve products. While other check valve manufacturers may use some of these
3 approval marks, designations and the like, I am aware of no others that feature all of them in
4 this combination, nor any that place them in the layout and formation shown in Exhibit 6
5 hereto.

6 19. Based upon my knowledge and experience in the fire protection
7 equipment industry, distributors and those directly involved in the installation of fire
8 protection equipment have come to rely upon Wilson & Cousins UL Listing Mark, including
9 the unique product control number, "27GH", as an indicator of source and for confirmation
10 that they are in fact receiving and installing a high quality Wilson & Cousins check valve
11 product.

12 20. Attached hereto as Exhibit 7 is a true and correct printout of the "about
13 us" page of a company by the name of T. Christy Enterprises, Inc. ("Christy"), the defendant
14 herein. According to its website, Christy represents that it is "a leading provider of products
15 to the irrigation, waterworks, light industrial, plumbing and retail markets." Christy claims to
16 "operate as independent sales representatives, manufacturers and master distributors of a
17 variety of products and product lines." Its stated "goal continues to be a "One-Stop Shop" for
18 the wholesaler/distributor." See <http://www.tchristy.com/About.asp>. Christy further
19 represents as follows: "Our mission is to provide every Christy's customer with the highest
20 level of quality, value and PRODUCT & SERVICE EXCELLENCE! To be a fair and
21 responsible partner to the manufacturers we have the honor of representing, carrying out the
22 goals and objectives of their respective organizations, while maximizing our value to our most
23 important assets, our employees and customers." See <http://www.tchristy.com/About.asp>.

24 21. I have learned that Christy is selling check valve products which it is
25 holding out to the consuming public as Wilson & Cousins check valve products when in fact
26 they are not. I have obtained a check valve product sold by Christy. A true and correct
27 photograph of that check valve product is shown in Exhibit 8 attached hereto. The product
28 shown in Exhibit 8 and which I understand is being sold by Christy is a "knock-off" of the

1 Wilson & Cousins check valve product; it mimics the appearance of Wilson & Cousins UL
2 Listed check valve product in that it contains the identical UL Listing Mark—including the
3 unique Wilson & Cousins product control number—as well as numerous other identical
4 markings placed in an identical or virtually identical layout on the product. Based upon my
5 15 years of experience in this industry, the overall impression conveyed by the Christy knock-
6 off product is that it is a Wilson & Cousins check valve product

7 22. On the internet, I have recently accessed a catalog put out by Christy
8 entitled “Christy Waterworks.” The catalog is located at
9 <http://www.tchristy.com/catalog/200703WaterworksCatalog.pdf>. A copy of the catalog is
10 attached hereto as Exhibit 9. At page 16 of the catalog, Christy depicts a Wilson & Cousins
11 check valve. I recognize the product shown as a Wilson & Cousins product from the W&C
12 Helmet Mark that is discernable on the product shown when the depiction is enlarged.
13 Additionally, on page 17 of the catalog, there appears what I recognize to be a Wilson &
14 Cousins’ brass fire hose nozzle. I recognize the product shown as Wilson & Cousins product
15 from the Wilson & Cousins’ model number, *i.e.*, HNL-206T, which is discernable on the
16 product when the depiction is enlarged. Enlarged depictions of these products as shown in the
17 catalog are attached hereto as Exhibit 10. To the best of my knowledge, Christy is not a
18 distributor of Wilson & Cousins products, and has not purchased products from our company.
19 Thus, Christy shows Wilson & Cousins products in its catalog but, based upon my
20 investigation, actually ships “knock-off” Wilson & Cousins’ products that copy Wilson &
21 Cousins unique UL Listing Mark and otherwise mimic the commercial impression conveyed
22 by Wilson & Cousins’ check valve and fire hose nozzle designs.

23 23. Christy’s use of Wilson & Cousins’ trademark, trade dress and/or
24 products in its advertising and promotion, and its distribution of “knock-off” products will
25 cause irreparable harm to Wilson & Cousins unless it is stopped. Use of Wilson & Cousins’
26 trademark and trade dress to sell knock-off products will cause immediate, irreparable harm in
27 multiple ways. First, Wilson & Cousins’ products are utilized in fire protection systems and
28 equipment and function to protect buildings and persons from damage and harm in the event

1 of a fire. If the "knock-off" products are of inferior quality, or should they fail to meet certain
2 specifications, they may fail to function properly to prevent or mitigate fire damage and the
3 harm to persons or loss of life. In addition to the obviously irreparable harm caused by the
4 foregoing, Wilson & Cousins may face claims of liability as those who purchased such
5 products under the belief that they were purchasing a Wilson & Cousins product may bring
6 suit or otherwise seek to impose liability upon Wilson & Cousins for the perceived product
7 failure. Purchasers of the Wilson & Cousins "knock off" product distributed by Christy who
8 see the Wilson & Cousins' trademark in the catalog, or who notice the use of the Wilson &
9 Cousins trade dress and unique UL control number (*i.e.*, 27GH), will mistakenly trace the
10 product back to and assert claims against Wilson & Cousins. If one contacts UL or ULC and
11 inquires as to the manufacturer of a check valve bearing the 27GH control number, they will
12 be advised that the number is tied to Wilson & Cousins. Such occurrences and claims will
13 undoubtedly irreparably harm Wilson & Cousins reputation in the industry, even assuming it
14 able to thereafter establish that its product was not used, and that a "knock-off" or counterfeit
15 product failed.

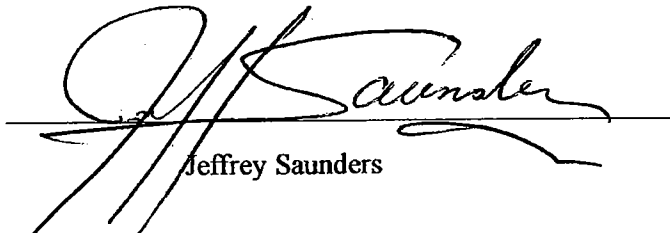
16 24. In order to prevent immediate irreparable harm to Wilson & Cousins,
17 Christy should be enjoined from depicting Wilson & Cousins' products on its web site
18 catalogs, and from further sale or distribution of any check valve or hose nozzle products that
19 feature the Wilson and Cousins UL or ULC Listing Mark, the unique Wilson & Cousins
20 Listing Mark Control number (*i.e.*, 27GH), or a confusingly similar combination of approval
21 marks and designations and other indicators in the layout used by Wilson & Cousins. In this
22 way, purchasers and installers of fire protection equipment will not be operating under the
23 mistaken belief that they are installing genuine, UL, ULC and FM approved Wilson &
24 Cousins products when in fact they are not.

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1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of
2 the United States that the foregoing facts are true and correct to the best of my knowledge
3 and belief.

4 Executed this 3rd day of January, 2008, at Toronto, Ontario, Canada.

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Jeffrey Saunders